

WATER COUNCIL MEETING

Dept. of Environmental Services
29 Hazen Dr., Concord, N.H.

January 12, 2005
9:00 a.m.

Members present: Councilors Bridges, Bradley, Butler, Cowan, DiMarzio, Frost, Lyons, Patenaude, Phillips, and Varotsis

Members absent: Councilors Barrett, Densberger, Dupee, Glines, Ingham, and Lussier

Chairman Bridges opened the meeting at 9:00 a.m.

1. Approval of Minutes of November 10, 2004 Meeting

A motion was made by Councilor Varotsis to accept the minutes of the November 10, 2004 meeting as presented. The motion was seconded by Councilor Bradley and unanimously voted.

9:02 Councilor Frost arrived

2. Approval of State Aid Grants

Steve Snell of the Wastewater Engineering Bureau requested approval of six state aid grants as set forth in a memo from Bureau Administrator John R. Bush, P.E. to Harry T. Stewart, P.E., Director, Water Division dated December 22, 2004.

Councilor Varotsis moved to approve the grants and recommend favorable action by the Governor and Executive Council by adoption of the following resolution in its entirety. Councilor Bradley seconded the motion and it was unanimously voted.

WHEREAS, The following municipalities have applied to the Department of Environmental Services, under the provisions of RSA 486, for grants in the amounts listed to aid in the defraying of the costs resulting from the construction of sewage disposal facilities, as defined in said Chapter:

<u>MUNICIPALITY</u>	<u>PROJ. NO.</u>	<u>PROJECT DESCRIPTION</u>	<u>AMOUNT</u>
Gilford	C-687	Gilford Village Interceptor	\$ 733,312
Woodstock	C-688	Lost River Road Sewer	290,905
WRPB*	C-689	Pendleton Beach Pump St Elect Upg.	2,535
WRPB*	C-690	Maiden Lady Cove Pump St Elect Upg	2,421
WRBP*	C-691	North Main Pump Station VFDs	19,341
Bristol	C-692	Chlorination/Dechlorination Facilities	357,209

*Winnepesaukee River Basin Program

WHEREAS, The Department of Environmental Services has examined said applications as to the eligibility of the construction costs for State contributions; and

WHEREAS, The Water Council finds that said projects are intended to control or reduce pollution in the surface waters of the State as defined in RSA 485-A;

NOW THEREFORE, The Water Council finds that all of the provisions of RSA 486 have been met by said applicants and respectfully recommends that the Governor and Executive Council approve said grants and authorize payment thereof through the Department of Environmental Services as provided for in said Chapter.

3. **Status of Appeals**

Michael Sclafani distributed an Appeals Status Report and reviewed pending appeals with the council.

- **Docket No. 03-10 WC - Appeal of Conservation Law Foundation**
A stay remains in effect on this appeal.
- **Docket No. 03-14 WC - Appeal of Gerald A. Bell**
A stay remains in effect on this appeal pending the resolution of a declaratory judgment action before the Merrimack County Superior Court.
- **Docket No. 04-05 WC - Appeal of Freudenberg-NOK General Partnership**
On November 10, Attorney Blenkinsop filed an appearance on behalf of DES. Also on that date the parties advised Mr. Sclafani that an impasse had been reached in negotiations and requested that the council allow the appeal to move forward. A prehearing conference was scheduled for January 3, 2005. On December 30, 2004 the appellant filed a Motion to Dismiss Administrative Order, which is the subject of the appeal. On January 3, 2005, the prehearing conference was convened and Vice Chairman DiMarzio presided. At the prehearing conference, DES and the appellant agreed to contact PSNH to schedule a meeting to discuss the ownership issue. On January 4, 2005 DES filed an Objection to the Motion to Dismiss Administrative Order. A second prehearing conference has been scheduled for February 14, 2005 to determine if an appeal hearing should be scheduled or if the parties intend to file a petition for declaratory judgment with the courts, in which case the appeal should be stayed pending the court's findings.
- **Docket No. 04-14 WC - Appeal of Mark and Marianne Bonaiuto**
The appellants did not file for reconsideration of the council's October 14, 2004 Decision & Order, and therefore this appeal is closed.
- **Docket No. 04-15 WC - Appeal of Town of Nottingham Selectmen**
A draft Decision & Order was distributed this date for review by the councilors.
- **Docket No. 04-17 WC - Appeal of Save Our Groundwater "SOG"**
A draft Decision & Order was distributed this date for review by the councilors.

- **Docket No. 04-18 WC - Appeal of Thaddeus Dymon**

This appeal and the Appeal of Town of Newport, Docket No. 04-19, will track together. A prehearing conference was held on November 15, 2004 at which Vice Chairman DiMarzio presided. At the prehearing conference, the parties agreed to file an Assented-to Motion to Stay pending the outcome of a boundary dispute before the Superior Court. On November 29, 2004 the Town of Newport filed an Assented-to Motion to Stay. On January 10, 2005 Thaddeus Dymon's attorney filed a withdrawal of appearance.

Councilor DiMarzio made a motion to grant the Assented-to Motion to Stay pending the findings of the Superior Court on the boundary dispute. Councilor Butler seconded the motion and it was unanimously voted.

- **Docket No. 04-19 WC - Appeal of Town of Newport**

See Above.

- **Docket No. 04-22 WC - Appeal of Robert Chapman and Chapman Scrap Metal Recycling**

This appeal was accepted on November 10, 2004 and a prehearing conference scheduled for January 24, 2005. Vice Chairman DiMarzio will preside. On December 3, Attorney K. Allen Brooks filed an appearance on behalf of DES.

9:10 Councilor Phillips arrived

- **Docket No. 04-15 WC - Appeal of Town of Nottingham Selectmen**

- **Docket No. 04-17 WC - Appeal of Save Our Groundwater "SOG"**

Mr. Sclafani directed the council back to Docket Nos. 04-15 and 04-17 and indicated that he expects Anne Edwards, council's attorney, to attend today's meeting. Chairman Bridges suggested that the councilors review the draft decisions but that any action be postponed until Attorney Edwards' arrival.

4. Proposed Rules

Attorney Gretchen Hamel presented three proposed rules for review and comment by council members.

Env-Ws 901 - Certification of Wastewater Treatment Plant Operators

These rules will expire on April 25, 2005. Substantive changes to the rules were made pursuant to recommendations of the Certification Committee and include the requirement that operators shall maintain current contact information with the Committee.

- Councilor Butler commented that the State of New Hampshire should also consider industrial operator certification. Attorney Hamel indicated that this is a jurisdictional issue which would require a legislative change.
- Councilor Bradley commented that "package plants" should have certified operators. Mr. Stewart added that because these plants discharge to groundwater rather than receiving waters they do not fall under these rules.

Env-Ws 1400 - Shoreland Protection Rules

Attorney Hamel explained that the interim Shoreland Protection Rules will expire on May 25, 2005. Many of the changes are substantive and were necessitated by legislative changes to RSA 483-B and a recent opinion from the Attorney General's Office. Section 1409 was added pursuant to the AG's opinion which addresses the department's application processes.

Mr. Stewart commented that there is currently a bill to create a legislative study committee specifically to look at the Shoreland Protection Act.

Env-Ws 1800 (formerly Env-C 700) - Rivers Management and Protection Program

The RMPP interim rules will expire May 15, 2005. The rules address the process for nominating a river or river segment for protection under RSA 483 and the criteria to evaluate the nomination. The intent is to readopt the rules with minimal changes. Any substantive changes should wait until DES' Rivers Coordinator, Steve Couture, returns to his position. Mr. Couture is presently on active duty in Iraq.

Attorney Hamel distributed a list showing the status of rules which come under the jurisdiction of the Water Council.

Bethann McCarthy, P.E., of the DES Dam Bureau presented proposed rules for the relative to the *Official List of Public Waters*.

Env-Wr 900 - Official List of Public Waters

The first *Official List of Public Waters* was published in 1990 as required by RSA 271:02 II. The *List* is a summary of NH waterbodies and is widely used by state agencies and environmental groups. The purpose of Env-Wr 900 is to develop a standard for the publication and maintenance of the *List*. Ms. McCarthy distributed a chart which shows the statutory definitions of public waters which apply to particular waterbodies. Ms. McCarthy stated that a committee of state agencies has been formed to look at ways to make the statutes related to public waters consistent.

5. Legislative Update

Harry Stewart discussed water-related legislation which is being tracked by DES.

HB 148 transfers the estuary project from DES to UNH. Mr. Stewart explained that the estuary project deals with issues related to planning in the seacoast area. The estuary program does not have regulatory authority. It has some oversight and opportunity to comment on issues related to the seacoast. It is federally funded, primarily by EPA.

HB45 allows municipalities the option to combine water and sewer budgets.

HB59 relates to a community having adequate capacity for septage disposal. Although DES supports most of the language, it does not support the section which states that if a community does not have adequate capacity by 2010, it will not be eligible to receive any state funds

HB69 imposes local control over large groundwater withdrawals. DES opposes this bill and has recommended that the Groundwater Commission be the venue for discussion of these issues.

Mr. Stewart expects to have text on several other bills by the council's February meeting.

3. Status of Appeals, Cont'd

- **Docket No. 04-15 WC - Appeal of Town of Nottingham Selectmen**
- **Docket No. 04-17 WC - Appeal of Save Our Groundwater "SOG"**

Mr. Sclafani directed the council to the two draft decisions in the above cases.

Councilor Butler made a motion to accept as presented the written decisions of the council's October 13, 2004 vote to decline to accept due to lack of jurisdiction the Appeal of Town of Nottingham Selectmen, Docket No. 04-15 WC, and Appeal of Save Our Groundwater, Docket No. 04-16 WC. Councilor Cowan seconded the motion and it was unanimously voted.

6. Other Business

Councilor Butler suggested that the council request that Attorney Anne Edwards attend appeal hearings. Chairman Bridges will contact the Attorney General's Office to discuss representation and report back to the council at the February meeting.

7. Next Meeting

The next meeting will be held on February 9, 2005.

8. Adjournment

Councilor Bradley made a motion to adjourn, Councilor Phillips seconded the motion and it was unanimously voted.

The meeting adjourned at approximately 10:45 a.m.